

BEFORE THE FEDERAL ELECTION COMMISSION 2011 JUL 25 PM 4: 19  
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In the Matter of )  
MUR 6416 ) DISMISSAL AND CASE  
SCOTT RIGELL FOR CONGRESS AND ) CLOSURE UNDER THE  
JOSEPH B. WOOD, AS TREASURER ) ENFORCEMENT PRIORITY  
EDWARD SCOTT RIGELL ) SYSTEM  
)  
)

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6416 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6416.

In this matter, the complaint alleges that Scott Rigell for Congress and Joseph B.

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1 Wood, in his official capacity as treasurer ("Committee")<sup>1</sup> and candidate Edward Scott Rigell  
2 violated the Act by failing to include a "stand by your ad" disclaimer in a television  
3 advertisement, as required by 2 U.S.C. § 441d(d)(1)(B). According to the complaint, on or  
4 about October 26, 2010, Rigell, who currently represents Virginia's Second Congressional  
5 District, began airing a television advertisement attacking his opponent, Glenn Nye. The  
6 complaint claims that the advertisement, a copy of which is included with the complaint,  
7 contained no audio or video statement in which Rigell states that he approved the message.

8 In its response, the Committee asserts that the advertisement it actually produced  
9 included the required "stand by your ad" disclaimer. However, it acknowledges that, due to  
10 an error by the cable system upon which the advertisement ran, the first few seconds of the  
11 advertisement were omitted, and the portion where the candidate appears and states that he  
12 approved the message was missing. The Committee has provided a press release issued by  
13 WVEC, the television station that ran the advertisement, acknowledging the station's error  
14 and maintaining that a corrected advertisement was subsequently broadcast in its entirety.  
15 Finally, the Committee argues that, based on prior Commission matters involving vendor  
16 errors, the Commission should dismiss this matter.

17 All public communications made by a political committee must include disclaimers.  
18 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). If a public communication is paid for and  
19 authorized by a candidate or an authorized committee of a candidate, then the communication  
20 must clearly state that it was paid for by such authorized political committee. 2 U.S.C.

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<sup>1</sup> David Rippe served as the Committee's treasurer during the events at issue in this matter. He has subsequently been replaced as treasurer by Mr. Wood.

1 § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Under the Act's "stand by your ad" provisions,  
2 a television communication paid for or authorized by a candidate's principal campaign  
3 committee also must include a statement by the candidate that identifies the candidate and  
4 indicates that the candidate approved the communication. 2 U.S.C. § 441d(d)(1)(B);  
5 11 C.F.R. § 110.11(c)(3)(ii). The candidate may make this oral statement through either "an  
6 unobscured, full-screen view of the candidate making the statement" or "the candidate in  
7 voice-over, accompanied by a clearly identifiable photographic or similar image of the  
8 candidate." 2 U.S.C. § 441d(d)(1)(B)(i); *see also* 11 C.F.R. § 110.11(c)(3)(ii). Furthermore,  
9 a similar statement that is clearly readable must appear in writing at the end of the  
10 communication. 2 U.S.C. § 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii).

11 When the advertisement at issue in this matter aired in October 2010, it contained a  
12 written disclaimer stating that the Committee paid for the advertisement and that Scott Rigell  
13 approved the message, but did not contain an oral statement by the candidate, as required by  
14 2 U.S.C. § 441d(d)(1)(B) and 11 C.F.R. § 110.11(c)(3)(ii). The failure to include the  
15 appropriate candidate statement in the advertisement that actually aired appears to be  
16 attributable to the cable system's error. The Commission previously dismissed a similar  
17 matter where the original advertisement produced by the Committee satisfied the Act's "stand  
18 by your ad" disclaimer requirements, but the version that actually aired did not satisfy all of  
19 the requirements due to vendor error. *See* MUR 5775R (Pryce for Congress). In addition, it  
20 appears that the advertisement in this matter contained sufficient identifying information to  
21 prevent the public from being misled as to who paid for it. Accordingly, under EPS, the  
22 Office of General Counsel has scored MUR 6416 as a low-rated matter and therefore, in  
23 furtherance of the Commission's priorities as discussed above, the Office of General Counsel

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1 believes the Commission should exercise its prosecutorial discretion and dismiss this matter.

2 See *Heckler v. Chaney*, 470 U.S. 821 (1985).

3 **RECOMMENDATIONS**

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5 The Office of General Counsel recommends that the Commission dismiss MUR 6416,  
6 close the file, and approve the appropriate letters.

7 Christopher Hughey  
8 Acting General Counsel  
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10  
11 7/20/11  
12 Date

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